IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

RCRev..No. 276 of 2007()

RCA.109/2002 of ADDL. DISTRICT COURT (ADHOC-I), THALASSERY
RCP.342/1998 of ADDL.MUNSIFF'S COURT, KANNUR
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REVISION PETITIONER/RESPONDENT/RESPONDENT:

K.V. PRAKASAN,
ROOM NO.NP X-248 IN 250 NEAR NORTH MALABAR GRAMIN BANK, KANNADIPARAMBA, P.O. KANNADIPARAMBA, KANNUR DISTRICT.

BY ADV. SMT.K.K.CHANDRALEKHA
SRI.SUDHEESH THAROL

RESPONDENTS: APPELLANTS/PETITIONERS:
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1. P. MUKUNDAN, S/O. KUNHIRAMMA,
AGED 53 YEARS, PUNNEN HOUSE, KANNADIPARAMBA AMSOM, MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

2. P.P. GOVINDHAN, S/O. CHAPPILA,
AGED 83 YEARS, P.P. HOUSE,KANNADIPARAMBA AMSOM, MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

3. C. YESODHA, W/O. LATE KUNHAMBU,
AGED 68 YEARS, THIYYAKUNIYIL HOUSE, KANNADIPARAMBA AMSOM, MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

4. C. ANITHA, D/O. LATE KUNHAMBU,
AGED 40 YEARS, THIYYAKUNIYIL HOUSE, KANNADIPARAMBA AMSOM, MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

5. C. AJITHA, D/O. LATE KUNHAMBU,
AGED 33 YEARS, THIYYAKUNIYIL HOUSE, KANNADIPARAMBA AMSOM, MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

6. C. ANISHA, D/O. LATE KUNHAMBU,
AGED 28 YEARS, THIYYAKUNIYIL HOUSE,
KANNADIPARAMBA AMSOM, MATHODAM DESOM,
P.O. KANNADIPARAMBA, KANNUR DIST.

7. P. GOURI, W/O.LATE KARUNAKARAN,
AGED 57 YEARS, P.P. HOUSE, KANNADIPARAMBA AMSOM,
MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

8. P. RENUKA, D/O.LATE KARUNAKARAN,
AGED 39 YEARS, P.P. HOUSE, KANNADIPARAMBA AMSOM,
MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

9. P. RAJITHA, D/O.LATE KARUNAKARAN,
AGED 32 YEARS, P.P. HOUSE, KANNADIPARAMBA AMSOM,
MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

10. P. RAJANI, D/O.LATE KARUNAKARAN,
AGED 29 YEARS, P.P. HOUSE, KANNADIPARAMBA AMSOM,
MATHODAM DESOM, P.O. KANNADIPARAMBA, KANNUR DIST.

11. A. NARAYANAN, S/O. NANI,
AGED 58 YEARS, AYODHYA, KANNADIPARAMBA,
P.O. KANNADIPARAMBA, KANNUR DIST.

12. C. ANIL, S/O.LATE A.KUNHAMBU,
AGED 37 YEARS, THIYYAKUNNIYIL HOUSE,
KANNADIPARAMBA AMSOM, MATHODAM DESOM,KANNUR DIST.

13. P. RATHEESAN, S/O.LATE P.KARUNAKARAN,
AGED 37 YEARS, P.P.HOUSE, KANNADIPARAMBA AMSOM,
MATHODAM DESOM,KANNUR DIST.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

HARUN-UL-RASHID, JJ.

R.C.R. NO. 276 OF 2007

Dated 22nd August,2007.

ORDER

Balakrishnan Nair, J.

The revision petitioner is the tenant. The respondents are the landlords. The petition schedule building originally belonged to four persons, who gave the same on lease to the petitioner herein for running a Ration shop. The respondents herein are the owners/legal heirs of the original owners. The Rent Control Petition was filed under Sections 11(2)(b), 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The Rent Controller dismissed the application on all grounds. The Appellate Authority reversed the finding of the Rent Controller under Section 11(3). In this revision petition we are concerned only with the validity of the said finding of the Rent Control Appellate Authority.

2. The brief facts of the case are the following: The petition schedule building consists of two rooms. It was given on rent to the tenant

on a monthly rent of Rs.135/- by the original landlords. At the time of filing the R.C.P., only two of the original owners were alive. The 1st respondent herein wanted one of the two rooms for starting a business. The son of the 2nd respondent herein wanted the second room for starting a book shop. The tenant resisted the application, contending that there was no bona fide need for the landlords to get the rooms. He is mainly depending on the income from the premises and no suitable building is available in the locality for shifting the Ration shop and so he prayed for dismissal of the R.C.P. As mentioned earlier, the Rent Controller dismissed the application on all grounds. The landlords appealed. The Appellate Authority upheld the bona fide need under Section 11(3). So, the tenant attacks the said finding of the Appellate Authority in this revision.

3. From the side of the landlords, Pws. 1 and 2 were examined and Exts.A1 to A4 were marked. From the side of the tenant, Rws.1 to 3 were examined and Exts.B1 and B2 were marked. The Commissioner's report and supplemental Commissioner's report were marked as Exts.C1 and C2. PW1 Mr.Mukundan, who is one of the landlords wanted one of the rooms for starting a business. He was engaged in rolling beedies for the Society manufacturing Kerala Dinesh Beedi. He stated that his fingers were stricken with fatigue and therefore, he cannot roll enough number of

beedies. So, he wanted to start a grocery business in one of the rooms in the petition schedule building. PW1, while in the box, stated that he is getting only Rs.50/- per day from the job of beedi rolling. The Appellate Authority noticed that RW1 tenant, who is the revision petitioner herein, while in the box did not raise any dispute about the income of PW1. The Appellate Authority, going by the materials on record, found that since the income of PW1 is only Rs.50/- per day, his desire for starting a business is justified. The Appellate Authority also accepted the contention of PW1 that he has got health problems and his fingers were stricken with fatigue, disabling him from rolling sufficient number of beedies. The Appellate Authority noticed that the said evidence is not dispelled, adducing better evidence by the tenant. So, PW1's need for starting a grocery business was found to be bona fide. We notice that the said finding of the Appellate Authority is a fair and reasonable finding of fact.

4. PW2 wanted the second room to start a book-stall. The Appellate Authority noted that the Rent Controller on imaginery grounds, which were never taken or urged by the tenant, held that PW2 has no idea about the business and therefore, his desire to start the business of selling books cannot be taken as serious. The claim of PW2 was challenged by the tenant, mainly on two grounds. The first ground was that his father was in the Gulf

and has amassing wealth. The second ground was that PW2 has taken a passport and therefore, he is likely to leave for Gulf soon. The Appellate Authority found that even if the father is wealthy, the son can legitimately desire to start a business and earn his livelihood. It was also held that obtaining a passport cannot be taken as a ground that he does not propose to start the business and wants to go abroad. We find that the said view taken by the Appellate Authority regarding the bona fides of the claim of PW2 for the second room occupied by the tenant is legal and proper. The same cannot be described as perverse.

5. The next point considered by the Appellate Authority is regarding the effect of the second proviso to Section 11(3) of the Act in this case. The Appellate Authority found that there was no evidence on record to show that the tenant is mainly depending on the income from the petition schedule building for his livelihood. It has also come out in evidence that there were vacant buildings in the neighbourhood, available for shifting the business premises. They were stated to be belonging to M/s. Aravindakshan, Thambayi teacher, P.P.Gopalan, Omana and Jameela. The tenant examined Rws.2 and 3, who were respectively the sons of Gopalan and Thambayi teacher. They asserted that though there are rooms in their ownership and are lying vacant, they are not ready to let out them to anybody. But, the

Appellate Authority noticed that no evidence was let in to show that the rooms in the buildings owned by Jameela, Aravindakshan and Omana were not available for lease. The Appellate Authority made special reference to Ext.C2 report of the Commissioner that apart from the buildings of Thambayi teacher and Gopalan, two vacant buildings were available on the eastern side of the road within a distance of 150 metres from the petition schedule building. The Appellate Authority noticed that the tenant has no explanation regarding those buildings. So, the said authority held that from the above evidence on record, it has to be found that vacant rooms were available in the locality. Therefore, even assuming the tenant is mainly depending on the income from the tenanted premises, the finding on the second proviso to Section 11(3) is against him. So, the Appellate Authority held that the revision petitioner is liable to be evicted under Section 11(3) of the Act.

6. The learned counsel for the revision petitioner pointed out that there is no mention regarding the details of the vacant rooms in Ext.C2 report. He handed over to us copies of Exts.C1 and C2 reports. We find that mention regarding other buildings lying vacant is made in Ext.C1 report. The mention about Ext.C2 report in the appellate judgment, instead of Ext.C1, is only a typographical error. The same will not have any effect

on the finding of the Appellate Authority. In the result, we find that no ground has been made out warranting interference under Section 20 of the Act with the findings of the Appellate Authority under Section 11(3). Accordingly, the Rent Control Revision is dismissed.

7. The learned counsel for the revision petitioner prays for some time to vacate the premises, as the revision petitioner is running a Ration shop. Having regard to the said fact, the revision petitioner is given six months' time from today to give vacant possession of the tenanted premises, provided he files an affidavit before the executing court, unconditionally undertaking to vacate the premises within the said time limit and also agreeing to pay the rent without fail till the rooms are handed over to the landlords. The affidavit in this regard shall be filed within three weeks from today.

K.BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID, JUDGE.

Nm/